

AMENDED IN SENATE AUGUST 24, 2009

SENATE BILL

No. 579

Introduced by Senator Lowenthal

February 27, 2009

~~An act to amend Sections 71200 and 71215 of the Public Resources Code, relating to ballast water management, and declaring the urgency thereof, to take effect immediately. An act to add and repeal Section 40440.13 of the Health and Safety Code, relating to the South Coast Air Quality Management District, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Lowenthal. ~~Public resources: ballast water management.~~ *South Coast Air Quality Management District: CEQA.*

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a

system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. The South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

This bill would require the district to allow certain sources of air contaminants to continue to operate, and issue permits under specified circumstances, notwithstanding this court decision, until a final outcome has been reached in the case, including the exhaustion of all appeals, or until the district completes the environmental reviews required by the court decision. These provisions would be repealed on May 1, 2012.

By imposing additional duties on a local air district, the bill would impose a state-mandated local program.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

~~The Marine Invasive Species Act generally applies to all vessels carrying or capable of carrying ballast water into the coastal waters of the state after operating outside of the coastal waters of the state and to all ballast water and associated sediments taken on a vessel. The State Lands Commission is required to establish reasonable and appropriate fees, not exceeding \$1,000 for each voyage, to be used to carry out the provisions of the act. A fee schedule established is required, among other things, to take into account the impact of the fees on vessels from California operating in Hawaii and Alaska trades.~~

~~This bill would require that a fee schedule established take into account, among other things, the impact of fees on vessels from California operating in the Hawaiian, Alaskan, or other domestic~~

noncontiguous trades. The bill would clarify that waters of the state means surface waters within the boundaries of the state as established by the California Constitution.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *As a result of the superior court decision in Natural*
4 *Resources Defense Council v. South Coast Air Quality*
5 *Management District (Super. Ct. Los Angeles County, 2007, No.*
6 *BS 110792) holding the South Coast Air Quality Management*
7 *District (district) violated the requirements of the California*
8 *Environmental Quality Act (CEQA) (Division 13 (commencing*
9 *with Section 21000) of the Public Resources Code) in the*
10 *promulgation of certain district rules, the district is unable to issue*
11 *over a thousand pending permits that rely on the district's internal*
12 *offset bank to offset emissions.*

13 (b) *The district may also have to set aside several thousand*
14 *permits that were previously issued in reliance on the district's*
15 *internal offset bank.*

16 (c) *Prompt legislative action is necessary as an interim measure*
17 *until the case described in subdivision (a) has concluded through*
18 *the judicial system; otherwise projects will be stopped from going*
19 *forward or frozen in place, representing significant losses to the*
20 *economy and the loss of numerous well-paying jobs.*

21 SEC. 2. *Section 40440.13 is added to the Health and Safety*
22 *Code, to read:*

23 40440.13. (a) *Notwithstanding the decision of the court in*
24 *Natural Resources Defense Council v. South Coast Air Quality*
25 *Management District (Super. Ct. Los Angeles County, 2007, No.*
26 *BS 110792), the south coast district shall do both of the following:*

27 (1) *Allow sources of air contaminants that are operating under*
28 *a permit issued in reliance on south coast district Rule 1304 as*
29 *amended on June 14, 1996, or Rule 1309.1 as amended May 3,*
30 *2002, to continue to operate.*

1 (2) *Issue permits in reliance on south coast district Rule 1304*
2 *as amended on June 14, 1996, or Rule 1309.1 as amended May*
3 *3, 2002.*

4 (b) *Nothing in this section affects the adoption, readoption, or*
5 *amendment, or environmental review, of south coast district Rule*
6 *1315.*

7 (c) *The south coast district shall keep track of offsets or credits*
8 *relating to permits described in paragraphs (1) and (2) of*
9 *subdivision (a), and shall make this information available to the*
10 *public. The south coast district shall ensure internal offset or credit*
11 *accounts created or maintained by the south coast district account*
12 *for all of the offsets or credits relating to permits described in*
13 *paragraphs (1) and (2) of subdivision (a), and shall ensure that*
14 *the internal accounts are consistent with the federal Clean Air Act*
15 *(42 U.S.C. Sec. 7401 et seq.).*

16 (d) *This section shall become inoperative upon any of the*
17 *following:*

18 (1) *A final outcome has been reached in the case described in*
19 *subdivision (a), including the exhaustion of all appeals.*

20 (2) *The south coast district completes all environmental reviews*
21 *required by the court decision described in subdivision (a).*

22 (e) *This section shall remain in effect only until May 1, 2012,*
23 *and as of that date is repealed, unless a later enacted statute, that*
24 *is enacted before May 1, 2012, deletes or extends that date.*

25 SEC. 3. *The Legislature finds and declares that a special law*
26 *is necessary and that a general law cannot be made applicable*
27 *within the meaning of Section 16 of Article IV of the California*
28 *Constitution because of unique circumstances concerning the South*
29 *Coast Air Quality Management District.*

30 SEC. 4. *No reimbursement is required by this act pursuant to*
31 *Section 6 of Article XIII B of the California Constitution because*
32 *a local agency or school district has the authority to levy service*
33 *charges, fees, or assessments sufficient to pay for the program or*
34 *level of service mandated by this act, within the meaning of Section*
35 *17556 of the Government Code.*

36 SEC. 5. *This act is an urgency statute necessary for the*
37 *immediate preservation of the public peace, health, or safety within*
38 *the meaning of Article IV of the Constitution and shall go into*
39 *immediate effect. The facts constituting the necessity are:*

Due to the court decision in Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792), the South Coast Air Quality Management District is unable to issue over a thousand pending permits that are either exempt from offset requirements or qualified to use offset credits from the district's Priority Reserve and is required to set aside thousands of permits already issued. Therefore, in order to allow the district to issue permits in an expeditious manner as an urgent interim measure until final disposition by the judicial system, it is necessary that this act take effect immediately.

~~SECTION 1. Section 71200 of the Public Resources Code is amended to read:~~

~~71200. Unless the context otherwise requires, the following definitions govern the construction of this division:~~

~~(a) "Ballast tank" means a tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.~~

~~(b) "Ballast water" means water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.~~

~~(c) "Board" means the State Water Resources Control Board.~~

~~(d) "Coastal waters" means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.~~

~~(e) "Commission" means the State Lands Commission.~~

~~(f) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.~~

~~(g) "Exchange" means to replace the water in a ballast tank using either of the following methods:~~

~~(1) "Flow through exchange," which means to flush out ballast water by pumping three full volumes of mid-ocean water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.~~

~~(2) "Empty/refill exchange," which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.~~

1 (h) ~~“Hull fouling” means the attachment or association of marine~~
2 ~~organisms to the submerged portion of a vessel or its~~
3 ~~appurtenances, including, but not limited to, sea chests, propellers,~~
4 ~~anchors, and associated chains.~~

5 (i) ~~“Mid-ocean waters” means waters that are more than 200~~
6 ~~nautical miles from land and at least 2,000 meters (6,560 feet,~~
7 ~~1,093 fathoms) deep.~~

8 (j) ~~“Nonindigenous species” means any species, including, but~~
9 ~~not limited to, the seeds, eggs, spores, or other biological material~~
10 ~~capable of reproducing that species, or any other viable biological~~
11 ~~material that enters an ecosystem beyond its historic range,~~
12 ~~including any of those organisms transferred from one country~~
13 ~~into another.~~

14 (k) ~~“Pacific Coast Region” means all coastal waters on the~~
15 ~~Pacific Coast of North America east of 154 degrees W longitude~~
16 ~~and north of 25 degrees N latitude, exclusive of the Gulf of~~
17 ~~California. The commission may modify these boundaries through~~
18 ~~regulation if the proponent for the boundary modification presents~~
19 ~~substantial scientific evidence that the proposed modification is~~
20 ~~equally or more effective at preventing the introduction of~~
21 ~~nonindigenous species through vessel vectors as the boundaries~~
22 ~~described herein.~~

23 (l) ~~“Person” means an individual, trust, firm, joint stock~~
24 ~~company, business concern, or corporation, including, but not~~
25 ~~limited to, a government corporation, partnership, limited liability~~
26 ~~company, or association. “Person” also means a city, county, city~~
27 ~~and county, district, commission, the state, or a department, agency,~~
28 ~~or political subdivision of the state, an interstate body, or the United~~
29 ~~States and its agencies and instrumentalities, to the extent permitted~~
30 ~~by law.~~

31 (m) ~~“Sediments” means matter settled out of ballast water within~~
32 ~~a vessel.~~

33 (n) ~~“Submerged portion of a vessel” means all parts of a vessel’s~~
34 ~~hull and structures that are submerged in water when the vessel is~~
35 ~~loaded to the deepest permissible legal draft.~~

36 (o) ~~“Waters of the state” means surface waters, including saline~~
37 ~~waters, that are within the boundaries of the state as established~~
38 ~~by Section 2 of Article III of the California Constitution.~~

39 (p) ~~“Vessel” means a vessel of 300 gross registered tons or~~
40 ~~more.~~

1 (q) “Voyage” means any transit by a vessel destined for a
2 California port or place from a port or place outside of the coastal
3 waters of the state.

4 SEC. 2. Section 71215 of the Public Resources Code is
5 amended to read:

6 71215. (a) (1) The Marine Invasive Species Control Fund is
7 hereby created. The money in the fund, upon appropriation by the
8 Legislature, shall be used solely to carry out this division.

9 (2) All money accruing to the Exotic Species Control Fund shall
10 be transferred to the Marine Invasive Species Control Fund.

11 (b) (1) The commission shall administer the fund in accordance
12 with this chapter.

13 (2) The commission shall establish, through regulation, a
14 reasonable and appropriate fee solely for the purposes of carrying
15 out this division. The fee may not exceed one thousand dollars
16 (\$1,000) for each voyage, as described in subdivision (c). This
17 amount may be adjusted for inflation every two years.

18 (3) In establishing fees, the commission shall consult with a
19 technical advisory group made up of interested persons, including,
20 but not limited to, shipping and port representatives.

21 (4) The commission may establish lower levels of fees and the
22 maximum amount of fees for individual shipping companies or
23 vessels.

24 (5) A fee schedule established, including the level of fees and
25 the maximum amount of fees, shall take into account the impact
26 of the fees on vessels operating from California in the Hawaiian,
27 Alaskan, or other domestic noncontiguous trades, the frequency
28 of calls by particular vessels to California ports within a year, the
29 ballast water practices of the vessels, and other relevant
30 considerations.

31 (c) The State Board of Equalization, in accordance with Part
32 22.5 (commencing with Section 44000) of Division 2 of the
33 Revenue and Taxation Code, shall collect the fee from the owner
34 or operator of each vessel that arrives at a California port or place
35 from a port or place outside of California. That fee may not be
36 assessed on a vessel arriving at a California port or place if that
37 vessel comes directly from another California port or place and
38 during that transit has not first arrived at a port or place outside
39 California or moved outside the EEZ prior to arrival at the
40 subsequent California port or place.

1 ~~(d) Notwithstanding any other provision of law, all fees imposed~~
2 ~~pursuant to this section shall be deposited into the Marine Invasive~~
3 ~~Species Control Fund.~~

4 ~~(e) Notwithstanding any other provision of law, all penalties~~
5 ~~and payments collected for violations of any requirements of this~~
6 ~~division shall be deposited into the Marine Invasive Species~~
7 ~~Control Fund.~~

8 ~~SEC. 3.— This act is an urgency statute necessary for the~~
9 ~~immediate preservation of the public peace, health, or safety within~~
10 ~~the meaning of Article IV of the Constitution and shall go into~~
11 ~~immediate effect. The facts constituting the necessity are:~~

12 ~~In order to clarify state law regarding the boundaries of waters~~
13 ~~of the state, and thereby minimize unnecessary and costly litigation~~
14 ~~that may adversely impact California's state waters, it is necessary~~
15 ~~for this act to take effect immediately.~~